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MAR 21 2005

In re Application of
James L. Rapier III
Application No. 10/613,306
Filed: July 7, 2003
For: Waste Container with Hidden Slides

OFFICE OF PETITIONS
Decision on Petition

This is a decision on the petition under 37 CFR 1.137(a), filed November 19, 2004, to revive the above-identified application.

The petition is **DISMISSED**.

Petitioner contends the abandonment of the application was unavoidable because petitioner did not receive the Notice to File Corrected Application Papers mailed October 2, 2003.

The evidence submitted with the petition

The petition states,

In the present application, both Petitioner's assistant and Petitioner reviewed the docket system papers (all 12 months) and the client's complete file when the Notice of Abandonment was received[, October 22, 2004]. No documents from the USPTO or other entities were found regarding this application except the return postcard stamped with the filing date and serial number.

The attorney's declaration states,

Affiant and Affiant's assistant, Diane B. Smith, reviewed the docket records (all twelve months of files) and the file jacket, and no Office Action was found or indicated. Had such Office action been received, it would have been included in the docket system where it would have been seen and reviewed at least twice and included in the file jacket.

A copy of the docket log for the instant application has been submitted. The log indicates that no paper was received between the time the return postcard was received and the time the Notice of Abandonment was received. The docket log indicates that the attorney did not file any papers pertaining to this application after the filing date but before receipt of the Notice of Abandonment.

Facts:

A review of the file indicates a Notice To File Corrected Application Papers was mailed to petitioner on November 6, 2003.

The Notice was received. Petitioner filed a reply to the Notice on November 14, 2003. The reply identifies the application by application number, inventor, filing date, and title. The reply states, "In response to the Notice to File Corrected Application Papers in the above-referenced application mailed November 6, 2003, a copy of which is enclosed, corrected informal drawings for Figures 1a, 4a to 4c are enclosed." Petitioner filed a copy of the Notice to File Corrected Application Papers with the reply. The reply bears the attorney's signature.

Analysis:

Petitioner filed a timely reply to the Notice to File Corrected Application Papers and the Office of Initial Patent Examination has not mailed a Notice of Abandonment for *this* application. Therefore, the Office can not grant the petition since the application does not appear to be abandoned.

Since the application is not abandoned, the Office cannot withdraw the holding of abandonment due to non-receipt of the Notice to File Corrected Application Papers.

Application no. 10/613,308:

Petitioner notes the application number listed on the Notice of Abandonment is application no. 10/613,308 and not application no. 10/613,306. Petitioner notes the application number listed on the Notice to File Corrected Application Papers is application no. 10/613,308 and not application no. 10/613,306. However, petitioner states the application number on both Notices is incorrect.

The basis for petitioner's determination that the application number listed on the Notices is incorrect is unclear. Application no. 10/613,308 is an application filed by petitioner. The filing date and first named applicant listed on the Notices are also the filing date and first named applicant for application no. 10/613,308.

If petitioner wishes to revive application no. 10/613,308, then a petition must be filed for that application. As of December 8, 2003, the petition fee for a small entity under 37 CFR 1.137(a) is \$250 and the petition fee under 37 CFR 1.137(b) is \$750.


Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (703) 872-9306
Attn: Office of Petitions

If a request for reconsideration is filed, and a decision on the new petition is not received within three months, petitioner may wish to call the number below to check on the status of the renewed petition.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley
Petitions Attorney
Office of Petitions

Attached: Copy of Notice to File Corrected Application Papers for the instant application
Copy of first page of petitioner's reply filed on November 14, 2003